IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6788 OF 2004

Sainik Sahakari Bank Limited
& Anr. .. Petitioners

Vs.

Shri Dhanaji Maruti Ghorpade & Ors. .. Respondents

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Shri S.S.Pakale for the petitioners.

Shri P.M.Mokashi for the respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 1ST DECEMBER, 2004.

P.C.

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioners challenge the orders passed by the Labour Court and the Industrial Court in the complaint (ULP) No.225 of 1997 and the Revision Application (ULP) No.59 of 2003, respectively, dismissing the preliminary objection raised by the petitioners to the effect that the complainant/respondent is not the workman or employee

and that therefore no complaint under the MRTU and PULP Act, 1971 lies. Both the Courts below on analysis of the evidence on record have rejected the contention raised by the petitioners and has held that the complainant is a workman.

3. It was the contention of the petitioners that the complainant was officiating as Branch Manager of the petitioner-bank and therefore he is not the workman. Whereas, it was the contention of the respondent that he was mere a clerk and for some time, he was asked to work as Officiating Branch Manager without actually assigning any managerial duties as such. The petitioners had tried to establish the case by producing certain documents which merely disclose that the duties performed by the complainant were not of managerial nature. It was sought to be argued that the respondent was recommending the leave of the employees as also was a member of the Committee sanctioning the loans. The documents produced in support of such contention however disclose that the complainant had merely recommended the leave in respect of one of the employees and had merely communicated the sanction of the loan. The petitioners had not been able to produce before the Industrial Court or even before this Court any

document disclosing that the complainant has ever sanctioned any loan amount as such or granted any leave. The petitioners have relied upon the decision of the learned Single Judge of this Court in the matter of **Ganesh Prasad Pandey v. K.W.Thakre & Anr.,** reported in 1999 I CLR 78. However, the said decision, in the facts of the present case, is of no help to the petitioners, though the various decisions which were referred to in the said judgment, certainly justify the findings arrived at by the Courts below.

4. In **Anand Bazar Patrika (P) Ltd. v. Its Workmen,** 1969 I LLJ SC 670, it was clearly held that "if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."

5. In **R.M.Nerlekar v. The Chief Commercial Supdt., Central Rly.,** Bombay 1991 II CLR 789, it was observed that "the expression "supervise" means to oversee, to exact work from other employees by giving them suitable directions or to accept responsibility for the execution of work by others under one’s control. Unless these elements are present in the

character of an employment, it is not possible to accept that there is employment in supervisory capacity."

6. In **Ganesh Prasad Pandey's case (supra),** it was clearly observed that "In hierarchy of employees, some sort of supervision by the employee over the employees of the lower ladder without any control may not by itself be sufficient to bring that employee in the category of supervisor, yet if the principal job of that employee is to oversee the work of employees who are on the lower ladder of the hierarchy and he has some sort of independent discretion and judgment, obviously such employee would fall within the category of supervisor." Undisputedly, there was no evidence led by the petitioners to disclose that a particular job of the respondent-complainant was that of the supervisory character, and on the contrary, it was undisputed fact that the complainant was working as clerk and for some time, he was asked to officiate as Branch Manager of the Bank. At the same time, there was nothing on record to disclose that he had any sort of independent discretion in the functioning of the branch or any of the works of supervisory character.

7. In the facts and circumstances of the case,

therefore, the findings arrived at by the Courts below regarding the status of the complainant as workman do not warrant interference in writ jurisdiction under Article 227 of the Constitution of India, and hence, the petition fails and is hereby rejected with no order as to costs.

8. The learned advocate for the petitioners prays for stay of the order passed by the Courts below. I do not find any justification in the prayer. Hence, the prayer for stay is rejected.